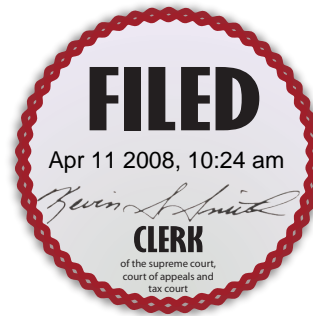


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

KAREN CELESTINO-HORSEMAN
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General Of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DESIREE MUNZ,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0707-CR-362

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No.49G15-0602-FD-21156

April 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a bench trial, Desiree Munz appeals her conviction of neglect of a dependent, a Class D felony. On appeal, Munz raises one issue, which we restate as whether sufficient evidence supports her conviction. Concluding sufficient evidence supports Munz's conviction, we affirm.

Facts and Procedural History

At approximately 8:46 a.m. on February 5, 2006, Officers Jeffrey Wood and Pepper Eldridge of the Marion County Sheriff's Department were dispatched to conduct a child welfare check at an apartment complex in Indianapolis. When they arrived, Officers Wood and Eldridge were directed to Munz's apartment. The front door was unlocked, and five-year-old B.M. was standing directly inside. While Officer Wood talked with B.M., Officer Eldridge went upstairs and found G.M. and M.M., both eleven months old, in a bedroom. After walking through the apartment and confirming no one else was there, Officers Wood and Eldridge prepared breakfast for the children and changed G.M.'s and M.M.'s diapers. One of the children had a "pretty bad" diaper rash, as well as sores on his buttocks and thighs. Transcript at 11.

Approximately one hour later, Officer Wood observed a person, later identified as Munz, staggering toward the apartment. Munz attempted to unlock the front door two or three times with her key, but was unsuccessful. When Officer Wood opened the door, he smelled alcohol on Munz's breath and noticed that "she still had an unsteady balance about her and had glassy and blood shot eyes." *Id.* at 13. Munz submitted to a field sobriety test,

during which Officer Wood noted a “lack of smooth pursuit in both her left and right eyes,” but refused to submit to a portable breath test. Id. at 15. In response to questioning from Officer Wood concerning her whereabouts, Munz stated initially that she had left for a few minutes to purchase cigarettes. When Officer Wood explained that he and Officer Eldridge “had been there for roughly an hour,” Munz stated she had left some time earlier and went to the children’s father’s home to get money for cigarettes, but did not specify how long she had been gone. Id. at 16. At that point, Officer Wood placed Munz under arrest. Approximately twenty minutes later, while the officers were arranging to transport Munz to the police station, she asked where her fifteen-year-old son was and explained that he was supposed to be watching the children.

The State charged Munz with neglect of a dependent, a Class D felony. After hearing testimony from Officers Wood and Eldridge and Munz, the trial court found Munz guilty. Based on this finding, the trial court entered a judgment of conviction and sentenced Munz to 539 days suspended with 365 days on probation. Munz now appeals.

Discussion and Decision

Munz argues insufficient evidence supports her conviction of neglect of a dependent. Our supreme court recently reiterated the standard of review to apply in examining a challenge to the sufficiency of the evidence:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they

must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations, footnote, and citations omitted) (emphasis in original).

To convict Munz of neglect of a dependent, the State was required to prove beyond a reasonable doubt that Munz knowingly or intentionally placed her dependent in a situation that endangered her dependant's life or health. See Ind. Code § 35-46-1-4(a). Munz does not challenge that B.M., G.M., or M.M. were her dependents or that she placed them in a situation that endangered their lives or health. Instead, Munz argues there is insufficient evidence to support the trial court's explicit finding that she did so knowingly. See Tr. at 59 (trial court stating, "I'm finding that it is knowingly," in response to Munz's counsel's question of whether Munz's conduct was intentional). Indiana Code section 35-41-2-2(b) states that "[a] person engages in conduct 'knowingly' if, when [s]he engages in the conduct, [s]he is aware of a high probability that [s]he is doing so." Our supreme court has further explained that "knowingly" within the context of the child neglect statute, Indiana Code section 35-46-1-4, "is that level where the accused must have been subjectively aware of a high probability that [s]he placed the dependent in a dangerous situation." Armour v. State, 479 N.E.2d 1294, 1297 (Ind. 1985).

Munz argues there was insufficient evidence to prove she acted knowingly "because she did not realize her oldest son was not in the home and thereby unable to watch the

children.” Appellant’s Brief at 5. However, the trial court necessarily rejected Munz’s version of events in reaching its verdict, and our standard of review precludes us from second guessing the trial court’s determination of Munz’s credibility.¹ See Drane, 867 N.E.2d at 146. Instead, the trial court credited Officers Wood and Eldridge, who testified that they entered an unlocked apartment and found three children unsupervised. Later, an intoxicated Munz approached the apartment, telling Officer Wood initially that she had left for a few minutes, but changing her story after Officer Wood explained that he and Officer Eldridge “had been there for roughly an hour.” Tr. at 16. Based on this evidence, in particular Munz’s evasive answers in response to Officer Wood’s questioning, we are convinced the trial court could have concluded beyond a reasonable doubt that Munz knowingly left her children in a situation that endangered their lives or health.

Conclusion

Sufficient evidence supports Munz’s conviction of neglect of a dependent.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.

¹ Although Munz does not explicitly state so, couching her argument in terms of her version of events sounds more like a challenge to whether the State disproved an affirmative defense than it does a challenge to the sufficiency of the evidence supporting her conviction. With respect to the former, Munz’s most likely defense appears to be mistake of fact, namely, that she mistakenly thought her fifteen-year-old son was watching her children. However, even assuming Munz had this defense, there was sufficient evidence to disprove it beyond a reasonable doubt because the mistake itself must be a reasonable one, Ind. Code § 35-41-3-7; Potter v. State, 684 N.E.2d 1127, 1135 (Ind. 1997), and Munz testified she did not tell her son to watch the children or even look in his room to see if he was there before she left.